

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUPERIOR BULK LOGISTICS, INC.  
D/B/A CARRY TRANSIT<sup>1</sup>/

Employer

and

CHAUFFEURS, TEAMSTERS AND HELPERS  
LOCAL UNION NO. 238 AFFILIATED WITH  
THE I.B. OF T.

DECISION AND DIRECTION OF ELECTION

Case 33-RC-4519

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:<sup>2</sup>/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>/

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>4</sup>/

All full-time and regular part-time drivers, mechanics and tank washers employed by the Employer and assigned to the Employer's Keokuk, Iowa terminal, including home-based drivers in Cedar Rapids, Iowa and tank washers employed at the Employer's facility in Clinton, Iowa; but excluding guards, professional employees, supervisors as defined in the Act, and all other employees.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Chauffeurs, Teamsters and Helpers Local Union No. 238, affiliated with the I.B. of T.

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the *33rd Region, Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602*, on or before August 4, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by August 11, 2000.

Dated July 28, 2000  
at: Peoria, Illinois

/s/ Glenn A. Zipp  
Glenn A. Zipp  
Regional Director, Region 33

1/ The Employer's name appears as amended at the hearing.

2/ I have carefully considered the record evidence, the parties' statements on the record, and their briefs.

3/ The Employer is an Illinois corporation engaged in the business of hauling grain and food products by tank trucks from locations throughout the United States including Keokuk, Iowa. During the past twelve months, a representative period, the Employer derived gross revenues in excess of \$50,000 for the transportation of goods from its Keokuk, Iowa facility directly to points located outside the State of Iowa. There are approximately 52 employees in the unit found appropriate herein.

4/ The sole issue raised in this matter has to do with the scope of the unit. The Petitioner seeks a unit of employees who are assigned or attached to the Employer's Keokuk, Iowa facility. Contrary to the Petitioner, the Employer maintains that the petition should be dismissed as being too narrow and asserts that the only appropriate unit herein would be one nation-wide in scope.

#### BACKGROUND

The Employer is a national trucking concern engaged in the transportation of bulk food products utilizing tank trucks. The Employer has eleven terminals in its system. They are located in Arlington, Texas; Bridgeview, Illinois; Dayton, Ohio; Decatur, Alabama; Decatur, Illinois; Keokuk, Iowa; Lafayette, Indiana; Lakeland, Florida; Owensboro, Kentucky; Tracy, California and Vasser, Michigan. I take administrative notice that the nearest terminal to the Keokuk terminal is the Decatur, Illinois terminal which is approximately one hundred and sixty miles away and that the furthest terminal in Tracy, California is approximately one thousand, nine hundred and sixteen miles away. The distance between the Tracy terminal and the Lakeland, Florida terminal is twenty seven hundred and twenty-four miles. The Employer employs approximately one hundred and fifty-five drivers at the eleven terminals. The Keokuk, facility has the most drivers assigned to it--forty-five drivers. It also employs three mechanics and four tank washers. The Bridgeview facility, which also serves as the Employer's operational headquarters has the second most assigned drivers employing twenty-one drivers, two mechanics and three tank washers.

The main office of the Employer's parent corporation, Superior Bulk Logistics, Inc. (Hereinafter referred to as Superior) is located in Oak Brook, Illinois. Carry Transit, a division of Carry Companies of Illinois, Inc., the Employer's direct forebear, was purchased by Superior on or about September 1, 1999. The Employer's transport equipment is identified by logos or lettering "Carry Transit" or "Carry Transit, A Division of Superior Carriers". Superior holds all authorities and operating licenses of all of the Employer's terminals and other locations. The Employer's president and chief executive officer is Howard Hoving. He oversees all operations, administration sales and safety functions of the Employer and is located at Employer's Bridgeview terminal. Hoving also serves as a Regional Manager over the Tracy, California; Arlington, Texas; Decatur, Alabama and Lakeland, Florida terminals. There is another Regional Manager, Denny Benton, who is responsible for the "midwest terminals", Keokuk, Iowa; Lafayette, Indiana; Decatur, Illinois; Vassar, Michigan; Dayton, Ohio and Owensport, Kentucky. Hoving also directly manages the Bridgeview facility. Each terminal has a terminal manager who reports directly to his/her appropriate Regional Manager. Regional Manager Benton reports directly to Hoving. Located at the Superior's Oak Brook headquarters is the Corporate Safety Director, Jeff St. Pierre. He is responsible for the Employer's safety policies and procedures and compliance with DOT regulations. The Employer's safety policies and procedures are formulated at Bridgeview and disseminated to the terminals.

#### THE TERMINALS

Each terminal is supervised by a terminal manager. Every terminal has a dispatcher, referred to as a terminal or local dispatcher. It further appears that all or most of the terminals employ terminal clerks who collect and process payroll information for the terminal's employees which are submitted to Bridgeview where the payroll is completed.

When a terminal needs to hire an employee, the Employer advertises locally in regards to the opening. Applicants are interviewed by the terminal manager who reviews applications. The terminal manager submits the information and his recommendations to headquarters in Bridgeview where the

final decision is made in regards to hiring. The Employer does not post terminal job openings at its other terminals.

The Employer's disciplinary system is initiated at the terminals. Generally, disciplinary actions taken against terminal employees starts at that level. The terminal manager has full authority to issue verbal and written warnings to terminal employees. However, suspension and termination decisions are made at the corporate level. The terminal manager initiates the process, setting out the facts of the situation or incident and making recommendations. Howard Hoving considers those recommendations but makes an independent investigation before making a final decision in such cases.

Training, including that involving safety, takes place at the terminal. Driver training is administered by a local terminal driver who is designated as a "Trainer". Trainers from the terminals are given instructions and training in providing training to other drivers at a corporate facility located in Tennessee. Safety meetings, seminars and other training are held at the terminals by corporate safety department personnel who regularly travel to the terminals. The terminals do not have a safety officer or coordinator. St. Pierre, Corporate Safety Director, receives materials regarding driver logs, equipment inspections and damage reports from each terminal. He receives reports of all accidents which are directly investigated by the corporate safety department.

#### The Dispatching of Drivers

As indicated above, each terminal employs a dispatcher. The Employer utilizes a company-wide computerized dispatch system. Customer orders and other dispatch information is immediately accessible to each of the terminals and can be acted upon by any of the appropriate terminal dispatchers. While dispatching is done initially by the terminal dispatchers, this system is reviewed and coordinated by Central Coordinators located in Decatur and Bridgeview, Illinois. The Central Coordinators can decide that a driver can be used more efficiently on a different route or assignment, and can make such a reassignment. In regards to the Central Coordinators, Hoving testified:

“(They) function as kind of a watch dog...(T)hey review the dispatcher decisions made by each local terminal and then make a judgment as to whether or not that dispatch decision will allow that terminal’s drivers to integrate effectively with the other loads that we have out in the system.”

Each terminal has its own seniority list. The terminal dispatcher makes the first assignments of each week based on terminal seniority. Thereafter, it appears from the record that drivers call their local dispatchers for instructions regarding their next load and route. In order to maximize “loaded miles”, the local dispatcher often instructs the drivers to proceed to the nearest terminal or to the nearest ready load. Drivers who are not out and back to the local terminal are described as “system” drivers or as “running the system”. There are some drivers, apparently by choice, run the system for approximately two weeks before returning to their terminal and several days off.

Hoving testified that seventy-five percent of the Keokuk terminal drivers are running some type of a system load on any given day. However, many of the runs are dispatched such that they return to Keokuk the following day so that Keokuk has sufficient trucks and drivers. Also, a substantial number of drivers generally have out and back runs from Keokuk or Cedar Rapids. These drivers are called “dedicated” drivers.

#### Interchange

It appears that a great deal of the interchange claimed by the Employer is the “system” driving discussed above. It does not appear that there is a change of employee status or that temporary transfers are involved in this system. While temporary transfers appear to take place within the Employer’s domain, there was no evidence offered at hearing that Keokuk drivers were so affected. Permanent transfers take place infrequently (one recently involved a Keokuk driver transferring to Lakeland, Florida) and are occasioned only by an employee request. As indicated above, the Employer does not post openings nationally, but does advertise such in its newsletters or payroll stuffers.

### Benefits and Working Conditions

Drivers are paid according to a standard pay schedule or system regardless of their terminal. However, there are differences in the mileage rates between those terminals located in the north from those in the south. It appears that the different rates apply wherever the terminal driver is dispatched. All employees receive the same fringe benefits including insurance, medical, profit-sharing, vacation and holidays. All drivers, mechanics and tank washers receive the same employee guide book and are subject to common work and safety rules. All new employees are subject to a ninety day probationary. All drivers are required to keep track of his/her hours in a log book provided by the Employer. Log books are submitted to the safety department in Oak Brook where they are scanned for violations. All drivers wear common carry uniforms.

### The Keokuk Terminal

The instant petitions refers to three locations – Keokuk, Cedar Rapids and Clinton, Iowa. However Keokuk is the only terminal location. There is no facility owned or operated by the Employer in Cedar Rapids. Instead, the Employer has a number of drivers who are assigned to the Keokuk terminal but are “home based” in Cedar Rapids and operate from their homes parking their equipment at their domiciles or in a public space. They are dispatched by the Keokuk dispatcher and are included on the Keokuk seniority list. The Employer owns a tank washing facility in Clinton, Iowa. Only one tank washer is employed at the Clinton location. Again, it appears that the Clinton employee is administratively part of the Keokuk terminal.

### DISCUSSION

At hearing, the status of the Keokuk facility, including the Cedar Rapids drivers and the one tank washing employee in Clinton, as a single facility was not raised as an issue. Indeed, the Employer characterized the proposed unit as a single location unit and proposed that tank washers be included in any unit that also included mechanics which caused the Petitioner to amend its petition to include tank

washers including the single employee at the Clinton tank washing facility. While the Employer in its brief takes the position that the petition asks for three “locations”, I find that the unit requested herein should be viewed as single location for the purpose of deciding the unit issue in this matter. As indicated above the Cedar Rapids drivers and the single Clinton tank washer are dispatched by and report to the Keokuk facility. Administratively, this group of employees are viewed and treated as part of the Employer’s terminal Keokuk. Accordingly, I find this grouping of employees as a single facility and I view the issue herein as whether the Petitioner’s proposed single facility unit is inappropriate.

The Board has often observed “that there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the unit be ‘appropriate’, that is, appropriate to insure to employees in each case “the fullest freedom in exercising the rights guaranteed by this Act.” Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7<sup>th</sup> Cir. 1951); Federal Electric Corp., 157 NLRB 1130 (1966); Parsons Investment Co., 152 NLRB 192 fn. 1 (1965); Capital Bakers, 168 NLRB 904, 905 (1968); National Cash Register Co., 166 NLRB 173 (1967). NLRB v. Carson Cable TV, 795 F.2d 879 (9<sup>th</sup> Cir. 1986); Dezcon, Inc., 295 NLRB 109 (1989). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” P.Ballantine & Sons, 141 NLRB 1103 (1963); Bamberger’s Paramus, 151 NLRB 748, 751 (1965); Purity Food Stores, 160 NLRB 651 (1966). Moreover, it is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. See, for example, General Instrument Corp. v. NLRB, 319 F.2d 420, 422-423 (4<sup>th</sup> Cir. 1963), *cert. denied* 375 U.S. 966 (1964); Mountain Telephone Co. v. NLRB, 310 F.2d 478, 480 (10<sup>th</sup> Cir. 1962).

In respect to single location units, the Board deems them presumptively appropriate for collective bargaining. J&L Plate, 310 NLRB 429 (1993); Bowie Hall Trucking, 290 NLRB 41 (1988).



The presumption in favor of a single location unit can only be overcome "by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit." *Id.* The factors that the Board examines in making this determination are centralized control over daily operations and labor relations, skills and functions of employees, general working conditions, bargaining history, employee interchange, and geographical location of the facilities in relation to each other. *Id.* at 42, citing Sol's, 272 NLRB 621 (1984). The burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. J&L Plate, *supra* at 429. Here I find that the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single-facility unit.

In reaching this finding, I note that there is no bargaining history in regards to the petitioned-for unit and no labor organization represents or is seeking to represent a broader unit than sought herein. I further note the extreme distances between the Employer's terminals. The nearest terminal to the Keokuk terminal is 160 miles away and most are much more distant with the Tracy, California terminal being 1,916 miles away. The far-flung geography of the Employer's terminals while not determinative, should be given significance in light of other factors present. See Bowie Hall Trucking, 290 NLRB 41, 43 (1988).

While the Employer is centralized in many administrative manners and its computerized overall dispatch system allows the terminal dispatchers to maximize loaded miles, the identity of the separate terminals are not substantially lost herein. In this respect, I find it significant that terminal dispatchers are involved in a great majority of dispatch decisions and are uniformly contacted by Terminal drivers for instructions after deliveries. The fact that several corporate central dispatchers overview the system and might make changes and resolve differences between different terminal dispatchers, the primary dispatching functions for terminal drivers are performed by his/her terminal dispatchers. I further note that each terminal keeps its own seniority list and first assignments each week are made by the terminal dispatchers on the basis of the seniority list. Similarly, employee

training takes place at the terminal with the terminal trainers instructed by a designated terminal trainer. Even safety meetings conducted by corporate safety department staff take place at the terminals and are attended by the employees of that specific terminal. Hoving explained in his testimony that it was impractical and too expensive to bring the employees of two terminals together for training or other kinds of meetings. Indeed, it appears that only actual contact that a Keokuk driver might be with different terminal employees in another terminal break room.

Decisions in regards to the removal of equipment at terminals from service are made at the terminal level. Terminal managers are clearly in charge of the terminal's day-to-day operations and are authorized to make purchases of terminal supplies and equipment up to \$2,000.00 without consulting Bridgeview. They play a major role in the areas of hiring and discipline. The terminal managers do the interviewing and make recommendations regarding hiring employees for his/her terminal. Except for matters discovered by the safety department in scanning drivers' log books, the terminal manager initiates the discipline process at the terminal. He gives oral warnings, issues written warnings to terminal employees and is consulted and makes recommendations in discharge and suspension situations. Other than periodic visits from the safety department staff, there is no evidence that corporate officials visit the terminals or play any role in the day-to-day events of the terminals. For all these reasons, I find that the Keokuk terminal's separate identity has not been negated and that the terminal manager has significant autonomy in regards to the terminal's day-to-day operations and labor relations. See New Britain Transportation Co., 330 NLRB No. 57 (1997), D & L Transportation, Inc., 324 NLRB No. 31 (1997).

Moreover, the utilization of "systems" drivers and their driving to and through other terminals in order to maximize their loads may be viewed as functional integration but in regards to interchange there is no evidence in the record of any temporary transfers as such. As indicated above, a substantial number of drivers are involved only in out-and-back trips from the Keokuk terminal and the terminal mechanics and tank washers are not involved in such interchange. See Bowie Hall Trucking Inc., 290 NLRB 41 (1988).

The Employer relies heavily on Dayton Transport Corp., 270 NLRB 1114 (1984) in its brief. As indicated above, I find that the terminal's "identity" has not been substantially lost herein and find

the facts here more akin to those found in Bowie Hall Trucking Inc., supra. than Dayton. I have also carefully read and considered the Decision and Direction of Election issued by Region Thirteen in regards to the Employer's Bridgeview facility in 1995. While the Regional Director found an employer-wide unit of drivers in that matter, circumstances have changed and the facts of the instant case are different. The petition herein requests a comprehensive terminal unit rather than a drivers unit, the company has been sold and its present terminal locations are more far flung geographically and the authority of terminal managers has expanded.

Accordingly, I find the single Keokuk facility to be appropriate in this matter.

5/ Your attention is directed to Part 103, Subpart B, Section 103.20 of the Board's Rules and Regulations, Series 8, as amended, which provides, inter alia, that employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election, that failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed, and that an employer shall be estopped from objecting to nonposting or late posting of Notices unless it notifies the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received the Notices. You may wish to review the above rule in its entirety so that you are fully aware of its complete contents and the obligations imposed by it.

6/ The full first and last names and addresses of all eligible voters must be filed by the employer. North Macon Health Care Facility, 315 NLRB 359 (1994).

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